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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1941.

No. 916

EUGENE TUTTLE, ET AL.,
*Petitioners and Appellants below,*

*vs.*

JAMES C. BELL, COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF WILL COUNTY, ILLINOIS,
*Respondent and Appellee below.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

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THE DUNLOP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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JAMES C. BELL, COUNTY TREASURER AND EX-OFFICIO COUNTY COLLECTOR OF WILL COUNTY, ILLINOIS,
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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.**

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*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your Petitioners, Eugene Tuttle and the other owners of farm lands named in the complaint herein, respectfully pray for a writ of certiorari to review a judgment of the Supreme Court of the State of Illinois, which affirmed a decree of the Circuit Court of Will County, Illinois.

## I.

### Summary Statement of the Matter Involved.

This is a suit in equity brought in the Circuit Court of Will County, Illinois, by Petitioners, owners of certain farm lands located wholly outside the limits of any incor-

porated city or village in Will County, against the Respondent, County Treasurer and *ex-officio* County Collector of that County, seeking an injunction against the collection of 1939 real estate taxes produced by the portions of the assessments of Petitioners' lands alleged to be illegally excessive.

Petitioners' complaint in the trial court was dismissed on Respondent's motion. (R. 15.) Petitioners elected to stand upon their complaint and the trial court entered a final decree dismissing the suit for want of equity. (R. 15.) The facts in the case, therefore, are the well pleaded allegations of the complaint admitted to be true by Respondent's motion to dismiss. These facts, which are more fully set forth in the brief attached hereto, are as follows:

Section 1 of Article IX of the Illinois Constitution[1] provides for levying property taxes "by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—* * *" (R. 4.) Pursuant thereto, the Illinois General Assembly has enacted statutes[2] which provide for the assessment of real estate in each county for the year 1939 and quadrennially thereafter at "its fair cash value, estimated at the price it would bring at a fair, voluntary sale". For many years the taxing authorities of Will County have generally disregarded the statutory requirement that real estate be assessed at its fair cash value and in lieu thereof have deliberately and intentionally valued real estate for assessment purposes at varying proportions less than fair cash value. In 1939 the Will County taxing officials announced that they would fix the assessed value of real estate at 30% of its fair cash value. (R. 8.)

Before the 1939 quadrennial assessment was made in Will County, representatives of farm organizations con-

[1] See Appendix.

[2] See Appendix.

ferred with the Respondent, who is also *ex-officio* Supervisor of Assessments, pointed out to him the existing illegal and unconstitutional discrimination in assessment against farm lands and in favor of town and city lots in Will County in the 1935 assessment (the previous quadrennial) as found by the Illinois Tax Commission, and requested that this discrimination be removed in the 1939 assessment. (R. 9.) This request was ignored and the assessment was made on the same basis as theretofore. (R. 9.) As a result of the foregoing, Petitioners' farms, together with farm land generally in Will County, were deliberately and systematically assessed in 1939 by these officials at 50% above the prevailing level of assessment used in assessing town and city lots and at 25% above the prevailing level of assessment of all real estate in Will County, including all farm land.

Each Petitioner thereafter duly filed a complaint against the 1939 assessment of his parcel of land with the Board of Review of Will County. After hearing Petitioners' evidence offered in support of their complaints the Board of Review denied the same and refused to remove the discrimination against their property. (R. 10.)

Petitioners, therefore, have been compelled to bear an illegally excessive and disproportionate share of the general tax burden in violation of Section 1 of Article IX of the State Constitution and the Fourteenth Amendment to the Constitution of the United States. (R. 10, 11.)

The Illinois Supreme Court affirmed the judgment of the trial court upon the ground that the admitted allegations of the complaint did not state a case for relief. Petitioners seasonably filed a petition for rehearing (R. 25 to 38), which was denied on November 12, 1941. (R. 38.)

## II.

### Jurisdiction.

Jurisdiction of this Honorable Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, C. 229, (Section 1, 43 Stat. 937, Section 344, of Title 28 U. S. C. A.), in that a final judgment or decree has been rendered by the highest court of the State of Illinois where a right or privilege was specially set up or claimed by the Petitioners under the Fourteenth Amendment to the Constitution of the United States and such judgment or decree erroneously denied to Petitioners such a right or privilege.

*Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U. S. 441 (1923), is believed to sustain the jurisdiction of this Court to review this case by certiorari.

## III.

### The Question Presented.

The question presented is: Does the plan of assessment of real property for taxation in Will County, Illinois, for the year 1939, pursued by the local assessment officials and applied to Petitioners' lands, violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

## IV.

### Reasons Relied on for the Allowance of the Writ.

1. Petitioners are entitled under the Fourteenth Amendment to the Constitution of the United States to be treated on a basis of equality with other taxpayers as required by the State Constitution and Statutes.

2. The plan or method of assessment involved in this case constitutes a systematic, arbitrary and intentional dis-

crimination by taxing officials in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

3. The decision of the Supreme Court of Illinois upholds the violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, to the injury of your Petitioners.

4. The decision of the Supreme Court of Illinois that the plan of assessment involved in this case does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States is in conflict with the applicable decisions of this Court in *Sioux City Bridge Co.* v. *Dakota County, Nebraska*, 260 U. S. 441 (1923), and in other cases cited in Petitioners' brief filed herewith.

Your Petitioners, in the brief accompanying this petition, will elaborate upon the foregoing reasons for the allowance of the writ of certiorari.

WHEREFORE, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all the proceedings in the above entitled case, and that the said judgment and decree of the Supreme Court of Illinois may be reversed by this Honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioners will ever pray.

Respectfully submitted,

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ROBERT S. CUSHMAN,
ROBERT C. KECK,
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